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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ALEXEY STEPANOV,)	
)	No. C 07-2492 RS
Plaintiff,)	
)	
v.)	ANSWER
)	
MICHAEL CHERTOFF, Secretary, Department)	
of Homeland Security; ALBERTO GONZALEZ,)	
Attorney General; EMILIO T. GONZALEZ,)	
Director, United States Citizenship and)	
Immigration Services; F. GERARD HEINAUER,)	
Director, Nebraska Service Center, United States)	
Citizenship and Immigration Services; and)	
ROBERT S. MUELLER, III, Director of Federal)	
Bureau of Investigation,)	
)	
Defendants.)	
)	

Defendants hereby submit their answer to Plaintiff's Complaint for Writ in the Nature of Mandamus.

1. Defendants admit the first sentence of Paragraph One; however, the Defendants deny that they have improperly withheld action on Plaintiff's application to his detriment.

PARTIES

2. Defendants admit the allegations in Paragraph Two.

3. Defendants admit the allegations in Paragraph Three.

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1 4. Defendants admit the allegations in Paragraph Four.

2 5. Defendants admit the allegations in Paragraph Five.

3 6. Defendants admit the allegations in Paragraph Six.

4 7. Defendants admit the allegations in Paragraph Seven.

5 **JURISDICTION**

6 8. Paragraph Eight consists of Plaintiff's allegation regarding jurisdiction, to which no
7 responsive pleading is required; however, to the extent a responsive pleading is deemed necessary,
8 Defendants deny the allegations in this paragraph.

9 **VENUE**

10 9. Paragraph Nine consists of Plaintiff's allegations regarding venue, to which no responsive
11 pleading is required; however, to the extent a responsive pleading is deemed necessary,
12 Defendants deny the allegations in this paragraph.

13 **EXHAUSTION OF REMEDIES**

14 10. Defendants deny that Plaintiff has exhausted his administrative remedies.

15 **CAUSE OF ACTION**

16 11. Defendants admit the first three sentences and the last sentence of Paragraph Eleven.
17 Defendants deny the remaining allegations in Paragraph Eleven.

18 12. Defendants deny the allegations in Paragraph Twelve for lack of knowledge as CIS does
19 not generally track or interfile status inquiry information in the alien registration file.

20 13. Defendants deny the allegations in Paragraph Thirteen.

21 14. Defendants admit the allegations in Paragraph Fourteen.

22 a) Defendants admit the allegations in Paragraph Fourteen subsection a.

23 b) Defendants admit the first sentence of Paragraph Fourteen subsection b. Defendants are
24 without sufficient information to admit or deny the remaining allegations.

25 c) Defendants are without sufficient information to admit or deny the allegations in
26 Paragraph Fourteen subsection c.

27 d) Defendants admit the allegations in Paragraph Fourteen subsection d.

28 15. Defendants deny the allegations in Paragraph Fifteen.

PRAYER

16. Paragraph Sixteen consists of Plaintiff's prayer for relief, to which no admission or denial is required; to the extent a responsive pleading is deemed to be required, the Defendants deny this paragraph.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The court should dismiss the complaint under Fed. R. Civ. P. 12(b)(6) because Plaintiff cannot establish that Defendants' duty to act is ministerial, that no other adequate remedy is available, or that Plaintiff has a clear right to the relief sought. *See* 28 U.S.C. § 1361.

WHEREFORE, Defendants pray for relief as follows:

That judgment be entered for Defendants and against Plaintiff, dismissing Plaintiff's complaint with prejudice; that Plaintiff take nothing; and that the Court grant such further relief as it deems just and proper under the circumstances.

Dated: July 10, 2007

Respectfully submitted,

SCOTT N. SCHOOLS
United States Attorney

/s/
ILA C. DEISS
Assistant United States Attorney
Attorneys for Defendants